In the first place I am of the opinion that only the Chief Justice can transfer an appeal in a civil matter from the Court of the Judge at Ipoh to the Court of Appeal held at Kuala Lumpur. Under the provisions of section 10 of the Courts Enactment, the sittings of the Court of Appeal are fixed by the Chief Justice with the concurrence of the High Commissioner, and appeals from the Court of the Judge at Ipoh, as this appeal is, are ordinarily heard at the Court of Appeal held in Ipoh, in accordance with the Gazette notification; and only the Chief Justice can transfer an appeal from one appeal Court to another, or direct that any appeal be heard otherwise than provided for in such notification.

Similar views were expressed in the case of *Seethai Achi v. Money Lending Firm of A.N.*,[4] and a transfer by a puisne Judge was held to be bad. I do not think there is the slightest doubt that this decision was correct, and I would only add that, in my opinion, such a transfer should, in the absence of consent, only be made when the disposal of an appeal was a matter of extreme urgency; and as stated before, I am not satisfied that there is any urgency in regard to the disposal of this appeal.

In regard to the alternative motion before us, I also think there is no doubt that the Court of Appeal, under section 26 of the Courts Enactment, whenever or wherever it is sitting, can direct a stay of execution or suspend proceedings under any decision appealed from, and consequently we can consider whether a stay should or should not be granted.

The principles of law that should guide a Court in considering a motion of this nature are clearly set out on pages 13 to 15 of *Kerr* on Receivers, 9th edition, and may be summarised as follows. The Court will not dispossess an executor or trustee upon slight grounds. A strong case must be made out to justify the dispossession of a Trustee or Executor who is willing to act. If any misconduct, waste, or improper disposition of the assets can be shewn, or if it appears that the Trust property has been improperly managed, or that a person in a fiduciary position has been guilty of a breach of duty, there is a sufficient foundation for the appointment of a Receiver.

Bearing those principles in mind, I do not think a stay of proceedings should be granted. It was argued (*inter alia*) that an impossible situation had been created by the appointment of the Receiver. There is, however, nothing to prevent any further application for the appointment of a manager, if such is necessary, or for any other variation of the order.

The main grounds of objection were that the order dispossessed the Executors and Trustees on inadequate grounds, and in fact, that it was impossible for the learned Judge to make the order without trying the issues in the suit. If this is so, then it would be quite impossible for any Court to make an interim order appointing a Receiver against Executors and Trustees, in any action founded on breach of duty. As a matter of fact the learned Judge specifically guarded himself against expressing any opinion which might prejudice the issues to be determined at the trial. Undoubtedly he must have perused the affidavits for and against the Motion, and came to the conclusion that it was a proper case for the appointment of a Receiver.

On a perusal of those affidavits it is clear that many allegations against the appellants have either been ignored in the affidavits in reply, or have been inadequately controverted, and that there is a strong *prima facie* case disclosed for the appointment of a Receiver, and particularly so in view of the fact that the two plaintiffs are contingently entitled to the whole residue of the estate of the deceased within three years.

There are, therefore, no sufficient grounds for granting a stay, and the motion is dismissed with costs.

McElwaine, C.J. (S.S.)—I concur.

Gordon-Smith, Ag. J.A. (Malaya)—I concur.

Motion dismissed.

[APPELLATE CRIMINAL JURISDICTION]

POYSER, C.J.

January 19, 1940.

GOH SENG KOK v. PUBLIC PROSECUTOR.

[PAHANG MAGISTRATE'S CRIMINAL APPEAL No. 2 of 1939]

Criminal Procedure Code (Cap. 6), S. 113 (ii)—Statements made in course of police investigation—admissibility in evidence of.

A statement made to the police by witnesses for the defence in the course of a police investigation is admissible in evidence under S. 113 (ii) of the Criminal Procedure Code. This is even so where such witnesses at the time of making the statement were accused persons provided they were not accused persons at the time the statement was referred to.

MAGISTRATE'S CRIMINAL APPEAL.

M. Morrison for the appellant.

T. D. Wallace, Deputy Public Prosecutor, for the Public Prosecutor.

Poyser, C.J.—The appellant was convicted on the following charges.

1. "That you at about 8.30 a.m. on 26.1.39 at 2½ mile Karak Road, Bentong, did obstruct a public servant to wit P.C. 3303 in the discharge of his public functions and thereby committed an offence punishable under section 186 Cap. 45".

2. "That you at about 8 a.m. on 26.1.39 at the 2½ mile Karak Road being the owner of motor vehicle P.A. 448 did use such vehicle on the Pahang trunk road with an excess load of 70 Cwts. contrary to G.N. 2459/38 and section 68 (3) and punishable under section 118 (i) Enactment 17/37".

It was conceded on behalf of the appellant that there was ample evidence to support the conviction; but it was argued that there had been irregularity in the proceedings, and if it had not been for such irregularity the Magistrate would not inevitably have come to the same conclusion as he did, and the conviction therefore should be quashed.

The alleged irregularity is that the Magistrate allowed statements (Exhibits P. 14 and P. 15) made to the police by two defence witnesses to be put to them in cross-examination, and evidence as to the making of such statements was subsequently given by Sergeant Major Arjan Singh who deposed that those witnesses were questioned through an interpreter. As to the evidence of those witnesses the Magistrate stated in his judgment:—

> "I have seldom seen witnesses whose manner so clearly betrayed that they were lying as did Voon Sin and Chu U. Cheok Liew Kim, driver of P.A. 448, and Tan Cheak Cheow, the cleaner of P.A. 448, were little better, and their evidence was completely undermined by Exhibits P. 14 and P. 15".

Mr. Morrison argued in regard to such statements that—

> the learned Magistrate was wrong in holding that exhibits 14 and 15 were admissible and should not have allowed them to be admitted on the ground:—
>
> (a) that they were not statements made by witnesses in the course of a police investigation but were typed statements typed at a subsequent date;
>
> (b) that the interpreter was never called as a witness; and
>
> (c) that the alleged statements were made by persons who at the time were accused person.

These statements could be used, as they were, under the provisions of section 113 (ii) of the Criminal Procedure Code, to impeach the credit of the witnesses. This section is as follows:—

> "When any witness is called for the prosecution or for the defence, other than the accused, the Court shall on the request of the accused or the prosecutor refer to any statement made by such witness to a police officer in the course of a police investigation under this Chapter, and may then, if the Court thinks it expedient in the interest of justice, direct the accused to be furnished with a copy thereof, and such statement may be used to impeach the credit of such witness in the manner provided by the Evidence Enactment".

The statements were recorded in the course of a police investigation and were typed out when they were made, and the fact that those witnesses were accused persons at the time they made their statement does not in my opinion affect the matter. The point is they were not accused persons when their statements were referred to.

The interpreter was not called, and to strictly prove that those statements were in fact made he should have been called. It is, however, at least open to doubt whether it was necessary to prove such statements, having regard to the provisions of section 80 of the Evidence Enactment.

I do not, however, think it necessary to specifically decide this point. There was abundant evidence, which the Magistrate accepted, establishing the guilt of the accused, and it appears from the judgment as a whole that the Magistrate must inevitably have come to the conclusion he did irrespective of the two exhibits P. 14 and P. 15.

The appeal is dismissed.

Appeal dismissed.